IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 837 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ABDUL WAHAB ABDUL MAJID BLOCH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 837 of 2000

MRS MADHUBEN SHARMA for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 14/09/2001

ORAL JUDGEMENT

In this petition filed under Article 226 of the Constitution, petitioner who is undergoing imprisonment for life and at present in Sabarmati Jail, Ahmedabad, has

prayed to pass order releasing him on due furlough on usual terms and conditions or on conditions that may be deemed just and proper by this Court, in the interest of justice

2. The petitioner was arrested in connection with Crime Registered vide CR No. 161 of 1993 of Gaikwad Haveli Police Station for the commission of offence punishable under Section 302 of the IPC. He was convicted by the Court of Sessions and sentenced to suffer imprisonment for life. The petitioner has filed Criminal Appeal against the said order which has been admitted and is pending for final disposal before this Court. According to the petitioner sub-rule 2 of Rule 3 of Bombay Parole and Furlough Rules, 1959 provides that a prisoner sentenced to suffer imprisonment for life may be released on furlough for two weeks every two years of actual imprisonment undergone. Petitioner, therefore, requested respondent No. 3 to enlist his request for release on furlough leave, which was refused. Petitioner, therefore, has filed Special Criminal Application No. 669 of 2000 before this Court. This Court (Coram : Kundan Singh, J) vide order dated August 2, 2000 directed the Jail authority to accept the application of the petitioner for releasing him on furlough leave and decide the same by passing appropriate order in accordance with law within one month from the date of the receipt of the application.

3. However, the jail authority has rejected the petitioner's application on the ground that the petitioner has not yet become eligible for furlough leave as he has not completed two years imprisonment from the date of actual imprisonment, which has given rise to the present petition.

4. Ms M.S.Sharma, learned advocate for the petitioner contended that the jail authority has not considered sub-rule 2 of Rule 3 of the Furlough Rules in its proper perspective which has resulted into miscarriage of justice. In fact the petitioner was an under-trial prisoner. According to her, the imprisonment undergone by the petitioner as an undertrial prisoner shall be counted as imprisonment undergone by him, and therefore, the authority ought to have considered that period also as imprisonment undergone while considering the application for furlough much earlier in point of time. In support of the aforesaid contention she placed reliance on the judgement of Division Bench of the Mumbai High Court in the case of Prahalad Dnyanoba Gajbhiye Vs. State of Maharashtra 1994 CRI.L.J.2555.

5. Mr. K.T.Dave, learned APP appears for respondent State and opposed the petition by filing affidavit in reply sworn by R.M.S.Brar, Special Inspector General of Prisons, State of Gujarat. In the said affidavit, after quoting Rule 3 of Bombay Parole and Furlough Rules 1959, it is stated that decision was taken on September 1, 2000 and the petitioner is entitled for his furlough on August 19, 2001 in view of the fact that petitioner is undergoing the sentence of imprisonment for life from August 19, 1999. Besides this, Mr. K.T.Dave, learned APP contended that in this petition order dated October 16, 2000 passed by the jail authority is not challenged by which the application submitted by the petitioner to jail authority for granting set off has been rejected.

6. I have considered the submissions advanced by the learned advocates appearing for the parties and the averments made in the petition and documents annexed therewith and the affidavit in reply filed by the respondents which is sworn by R.M.S.Brar, Special Inspector General of Prisons, State of Gujarat as well as the judgement cited at bar by the learned advocate for the petitioner.

7. So far as the judgement in Prahalad Dnyanoba Gajbhiye's case (supra) relied upon by Ms. M.S.Sharma, is concerned, it has persuasive value and it is not a binding precedent to this Court.

8. On the facts and in the circumstances emerging from the record of the case it appears that this Court (Kundan Singh, J) vide order dated August 2, 2000 recorded in Criminal Misc. Application No. 669 of 2000, directed the jail authority to accept the application of the petitioner for granting him furlough leave and to decide the same within a period of one month from the date of receipt of the application in accordance with law. Pursuant to the same, jail authority has decided the said application vide order dated September 1, 2000. The said order was passed by the Dy. Inspector General of Prisons, Ahmedabad and conveyed to Jail Superintendent, Ahmedabad Central Jail which inter alia reveals that the petitioner is the main accused of Wahab Gang. 29 cases are registered against him, in which six cases the offences are of murder and in three cases the offences are of kidnapping. At present the petitioner has been sentenced for life imprisonment under Section 302 of IPC vide order dated August 19, 1999 and as per provisions of rule 3(2) of Furlough Rules, he will be entitled to first furlough on August 19,2001 i.e. after

a period of two years from the date of the implementation of the conviction. Hence, petitioner's application cannot be accepted.

9. On having perusal of the Bombay Parole and Furlough Rules, 1959, there is no manner of doubt that application for furlough leave can be entertained only after two years from the date of implementation of the sentence for imprisonment for life. Therefore, according to me no illegality has been committed by the Jail authority in rejecting the application of the petitioner since petitioner would be entitled to first furlough leave only on August 19, 2001 by virtue of Rule 3(2) of the Furlough Rules.

10. Seen in the above context, petitioner is not entitled to furlough leave and, therefore, application merits rejection.

11. For the foregoing reasons petition fails and is accordingly rejected. Rule is discharged.

(A.M.Kapadia, J)

Jayanti*